

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

7 GLORIA SCOTT AND *
8 DEANIA JACKSON, *
9 * NO. 96-8461
10 VERSUS * DIVISION "I"
11 * SECTION 14
12 THE AMERICAN TOBACCO *
13 COMPANY, INC., ET AL. *

17 Transcript of proceedings before the
18 Honorable Richard J. Ganucheau, Judge Pro Tempore,
19 Civil District Court, Parish of Orleans, State of
20 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
21 70112, commencing on June 18, 2001.

27 * * * * *
28 Thursday Morning Session
29 April 24, 2003
30 9:37 a.m.
31 * * * * *

I N D E X

2 Witness Page
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Cross (By Mr. Murray) 18923

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Thursday Morning Session
April 24, 2003

9:37 a.m.

* * * * *

P R O C E E D I N G S

* * * * *

(In open court without a jury
present:)

THE COURT:

Good morning.

I understand that defense counsel
wishes to place something of record before
the jury is brought into the courtroom.

Mr. Sholes?

MR. SHOLES:

Yes, Your Honor.

Prior to resting yesterday, I
neglected to introduce the exhibits which
were the sources of the demonstratives we
used yesterday.

It's a rather lengthy list, Your
Honor, but I will be more than happy to
begin reading it.

Did we give them a copy of the source
list?

MR. MURRAY:

I thought you were making a proffer.

MR. SHOLES:

I am making a proffer, but I am also
introducing the source exhibits that we

31 used for the demonstratives. They are on
32 the exhibit list.

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1 Tell you what, I will do the proffer
2 first and you can check them to see if you
3 have a problem.

4 MR. MURRAY:

5 You didn't tell me you were going to
6 do this. Let me check and talk to people
7 about this.

8 MR. SHOLES:

9 No problem.

10 Your Honor, at this time for the
11 proffer, had defendants been allowed to
12 ask Dr. Norrell certain questions about
13 the two class representatives,
14 Gloria Scott and Deania Jackson, he would
15 have testified that:

16 Ms. Scott knew at an early age that
17 smoking was dangerous.

18 Ms. Scott knew when she was growing
19 up that smoking could be hard to quit.

20 Ms. Scott knew that she was addicted
21 to cigarettes early on.

22 Ms. Scott heard the government's
23 message regarding smoking.

24 Ms. Scott did not hear or rely upon
25 any allegedly fraudulent statements made
26 by the defendants, including the Tobacco
27 Institute or CTR.

28 From 1979 until at least 1992,
29 Ms. Scott's own doctors warned her about
30 the health risks of smoking and told her
31 to quit.

32 Ms. Scott learned about nicotine

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1 addiction in her chemical dependency
2 course work.

3 Dr. Norrell would have testified that
4 Ms. Scott was aware of the risks of
5 smoking, and her own awareness mirrors
6 that of what his research has shown to be
7 the public's awareness during this time.

8 Dr. Norrell would have testified that
9 Ms. Jackson knew at an early age that
10 smoking was dangerous.

11 Ms. Jackson knew she was growing
12 up -- when she was growing up that smoking
13 could be hard to quit.

14 Ms. Jackson heard the government's
15 message regarding smoking.

16 Ms. Jackson did not hear or rely upon
17 any allegedly fraudulent statements made
18 by the defendants, including TI or CTR.

19 As an adult, Ms. Jackson learned
20 about the dangers of smoking through the
21 Jehovah's Witnesses, which led to her
22 quitting for six years.

23 In spite of the public's awareness
24 and her own awareness, in 1992 as an adult
25 Ms. Jackson began to smoke again after six
26 years of abstinence.

27 When Ms. Jackson began smoking again

28 in 1992, her mother told her: You are
29 killing your lungs.
30 Dr. Norrell would have testified that
31 Ms. Jackson was aware of the risk of
32 smoking, and that her own awareness

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1 mirrors what his research has shown to be
2 the public's awareness during that time
3 period.

4 And of course, Your Honor, among
5 Dr. Norrell's research sources were
6 plaintiffs' depositions, answers to
7 interrogatories, and the depositions of
8 friends and family members.

9 These were examples of what was in
10 the public domain, and what Ms. Scott and
11 Ms. Jackson were specifically exposed to
12 and knew about the risks of smoking.

13 And after they have had a chance to
14 review the exhibits, we would try to do
15 that introduction maybe later on this
16 afternoon.

17 THE COURT:

18 End of proffer by defense counsel?

19 MR. SHOLES:

20 End of proffer.

21 THE COURT:

22 Any response to the proffer,
23 Mr. Murray, on behalf of the plaintiffs?

24 MR. MURRAY:

25 Yes, Your Honor.

26 Your Honor, I just want to make it
27 clear for the record that we objected to
28 the testimony that has just been proffered
29 on two grounds.

30 First, relevance, in light of the
31 Supreme Court's ruling on the issues and
32 on the questions of individual issues.

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1 But also on the grounds that the
2 proffered testimony was not part of the
3 expert report tendered by the witness, and
4 the information that he relies upon to
5 give that testimony was not part of his
6 reliance documents, and therefore it's in
7 violation of CMO 7.

8 THE COURT:

9 And for the record, the Court's
10 ruling with regard to the questions
11 allowable to this witness was based upon
12 the language in the Louisiana Supreme
13 Court's November 15, 2002, decision, which
14 reads as follows:

15 We conclude that Phase I of the trial
16 should be conducted so as to determine
17 defendants' liability for establishing a
18 court-supervised medical monitoring and/or
19 cessation program.

20 Such a trial will include the common
21 issues of fault and causation which can be
22 tried on a class-wide basis, including the
23 Bourgeois factors.

24 During Phase I, defendants will have

25 the opportunity to present any class-wide
26 affirmative defenses.
27 In addition, my ruling was also based
28 upon the fact that those issues with
29 regard to the class representatives are
30 nowhere addressed in Dr. Norrell's report
31 and, as Mr. Murray indicates, it's a
32 violation of the trial orders of the
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1 case.

2 Anything else for the record before
3 we bring the jurors in?

4 MR. SHOLES:

5 Nothing further, Your Honor.

6 THE COURT:

7 All right.

8 Is the jury ready, Mr. McCoy? Bring
9 the jurors in, please.

10 (In open court with a jury present at
11 9:42 a.m.):

12 THE COURT:

13 Please be seated. The court will
14 come to order.

15 Plaintiffs counsel ready to conduct
16 cross-examination of Dr. Norrell?

17 MR. MURRAY:

18 Yes, I am, Your Honor.

19 Good morning, Your Honor. Good
20 morning, ladies and gentlemen of the jury.

21 -- -- --

22 ROBERT J. NORRELL, Ph.D.

23 being previously duly sworn by the Court, testifies
24 and says as follows:

25 -- -- --

26 CROSS-EXAMINATION

27 BY MR. MURRAY:

28 Q. Good morning, Professor Norrell.

29 A. Good morning.

30 Q. Professor, early in your testimony to this
31 jury, you indicated that historians are uniquely
32 qualified to discuss what Louisiana citizens knew

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1 and when they knew it. Is that correct?

2 A. Yes.

3 Q. And I think you explained by saying that
4 people make mistakes. For instance, people have
5 problems recognizing bias. Do you recall that
6 testimony?

7 A. Well, I did make that statement, and I think
8 I applied that, of course, to historians and to all
9 kinds of folks.

10 But, yes, that's the thing that sets a
11 historian apart I believe is what I was trying to
12 explain is that we are trained to avoid mistakes
13 that the average person might make in looking at
14 something in the past.

15 Q. Average people like the jury?

16 A. Well, I think I was talking about my students
17 at the University of Tennessee. That's the way I
18 train them.

19 But I could make the same mistake too had I
20 not had the kind of training that I have had.

21 Q. Tell the jury what you mean by recognizing

22 bias?

23 A. Well, when you look at an historical
24 document, it's real important to see who wrote it.
25 It's important to see when it was written. It's
26 very important to see to whom the document was
27 directed at.

28 If you do that, you can -- and then you read
29 the document very carefully, you can see in the
30 document sometimes there are opinions or points of
31 view that reflect that person's choice in what he or
32 she believes. And that's bias.

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1 We all have them. There is nothing wrong
2 about them. That's just the way we human beings
3 are.

4 Q. Let's see if we can flesh that out.

5 When you reviewed the historical documents,
6 did you detect any bias on the part of the public
7 health officials?

8 A. When I reviewed those documents, I think you
9 see on the part of the public health documents --
10 the public health people clear strong beliefs on
11 nearly all of them. And by the 1960s we are talking
12 about all of them that get reported on.

13 They have firmly the belief, embraced the
14 belief that smoking was dangerous. They had -- now,
15 they base that on objective research, but they
16 have -- many of the people in the public health
17 community were convinced of the fact of disease, and
18 many of them were convinced of the specific things
19 that ought to happen.

20 So as individuals I believe that they had
21 biases, just as any person has bias about something
22 that they care a lot about.

23 Q. So you are not using bias in the sense of
24 prejudice or personal gain or personal motives. You
25 are using it simply to say that bias represents a
26 point of view?

27 A. Well, it could be -- point of view could be
28 based on prejudice or economic gain. But it also
29 could be based on a belief so firm that you wouldn't
30 entertain evidence to the contrary.

31 Q. Doctor, I'm not sure you answered my
32 question. Let me try it again.

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1 Do you mean bias to simply represent a
2 person's point of view, or do you use the term to
3 mean something similar to prejudice; that is, a
4 motive beyond simply your beliefs?

5 Which way did you use that term or mean that
6 term when you used it?

7 A. Well, I essentially mean point of view, but I
8 also understand that point of view encompasses the
9 second definition there as well.

10 Q. So if we use the term prejudice rather than
11 bias, then we would be talking more about the motive
12 than the point of view?

13 In other words, I guess what I'm trying to
14 get to, Doctor, is do you consider the motives of
15 the people who make the statement that you review?

16 A. No, not really.

17 I looked at thousands of documents on the
18 information that was coming to the American public

19 and to the people of Louisiana about smoking and
20 health. And I understand that folks have point of
21 view, but bias or belief or point of view, of
22 course, are shaped by things other than
23 information.

24 And I studied information, the information
25 that was coming to people.

26 Q. Doctor, in reviewing the statements that you
27 found in the press, did you consider the motives of
28 the people who were making the statements? That is,
29 did they have a motive of personal gain, did they
30 have a motive of intellectual honesty, did they have
31 a motive of trying to do good for the people?

32 Did that ever come into your consideration of
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1 what was important and what was not?

2 A. Well, you know, I'm a historian expert, not a
3 psychiatrist or psychologist, and I really didn't --
4 I don't have an expert opinion on motivation because
5 what I studied was information.

6 You know, I certainly observed that some
7 people have a different point of view from others.
8 I mean, that's absolutely clear if you look at as
9 many documents as I did, that there are a lot of
10 different points of view.

11 But I am not professionally trained to make
12 judgments about motivation.

13 Q. Well, if you meant the term bias as to
14 exclude motivation, what would you be looking for in
15 a piece of information to determine bias other than
16 just the point of view expressed in the document?

17 A. I'm sorry, sir, could you run that one by me
18 again?

19 Q. Well, I guess I need to start at the
20 beginning.

21 You indicated that people have a problem that
22 historians don't have because historians are trained
23 to recognize bias.

24 And I'm trying to find out what you mean by
25 bias. And you told me, well, that simply means the
26 point of view.

27 Now, anybody can read an article and
28 understand what the point of view is in that
29 article, can't they?

30 A. Well, yes. And I suppose maybe I should make
31 a distinction between point of view and motivation.

32 I can read a document and say, Well, I
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1 believe this comes from the point of view of a
2 New Orleans chest physician who has done a lot of
3 operations on lung cancer and has a distinct point
4 of view about what he thinks about smoking and lung
5 cancer.

6 Now, on the question of motivation, do I know
7 what was deep in the heart of Dr. Ochsner or deep in
8 the mind of Dr. Ochsner that moved him to do that?
9 I would just be speculating.

10 I can tell you what the man did and I can
11 make judgments about what its impact was on public
12 information, public awareness, but I can't really
13 express a professional opinion on what motivated
14 Dr. Ochsner.

15 Q. Doctor, in comparing historians with people,

16 who do you think would have the more accurate view
17 of history, recent history: The historian who goes
18 to the newspapers and finds articles that may or may
19 not have been read, finds TV articles that may or
20 may not have been seen, or the people who live that
21 history?

22 A. Well, Mr. Murray, to some extent it depends
23 on the historian. And, you know, like there are
24 good lawyers and there are better lawyers, there are
25 some good historians and some not so good historians

26 If the historian has followed the method that
27 I have explained was my method and I think is the
28 right mending, they would of course look at
29 newspapers, but they would also look at a wide range
30 of other things, television.

31 They would compare that to all manner of
32 public documents from the government, a wide array

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1 of information that came through popular culture,
2 the whole range of things that I went through in
3 preparing for this testimony.

4 And I think that person who has done all of
5 those things, and if he knows how to place each of
6 those in some kind of broader historical context, he
7 or she might have a broader, bigger viewpoint about
8 the circumstances than a person who just knows what
9 he or she knows at one point in time.

10 But now I'm not saying that all historians
11 are always going to know better than any average
12 person. You know, common sense is a good thing.

13 Q. I didn't say average person. I said a person
14 who had lived the history, the person who is alive,
15 observed events, was there with the members of this
16 class over the years.

17 Do you think a historian is in a better
18 position than those folks to know what the public
19 knew?

20 A. I think that a historian who has followed the
21 method that I have and has done the level of
22 research on the great many different sources of
23 information probably has a better understanding of
24 the context, can bring more viewpoints, and really a
25 little better critical judgment to it than the
26 person who has lived through one set of experiences.

27 Q. Now, Doctor, as part of your support for what
28 people knew and when they knew it, you told us about
29 a fellow who ran for president in 1920 on an
30 antitobacco platform. Do you recall that?

31 A. Well, it was actually a lady.

32 Q. A lady. How did that lady do?

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1 A. She didn't win, but she was on the ballot and
2 she made a lot of -- you know, she got a lot of
3 attention, maybe like Mr. Nader did in 2000.

4 Q. Got less than one percent of the vote, didn't
5 she?

6 A. She did not get very many votes, but neither
7 did Mr. Nader.

8 Q. You told us about the slang terms, and like
9 coffin nails, cancer sticks. I'm kind of
10 intrigued. Your support for the popular notion
11 cancer stick was a quote from a 1964 New York City
12 student?

13 A. Well, that's just what the Random House
14 Dictionary of Slang did.
15 I can testify growing up in Hazel Green,
16 Alabama, in the 1950s that people used cancer sticks
17 all the time. My father would put one in his mouth
18 occasionally and it was a cancer stick, and people
19 would comment on that. They might laugh, but they
20 knew what the significance of it was.
21 Q. Let me talk to you about it. Have you ever
22 heard the term mixed message?
23 A. Yes.
24 Q. You showed us some film clips in the '40s and
25 '50s where people talked about cigarettes as being
26 unhealthy or coffin nails, using that term, that
27 kind of slang.
28 And you indicated that people who saw those
29 movies would have gotten the message that cigarettes
30 were dangerous. Is that a fair assumption?
31 A. Well, I think what I was trying to
32 communicate was the movie makers wouldn't have had a
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1 character talking about coffin nails or cancer
2 sticks or nicotine things had those terms not
3 already been used a lot in American society so that
4 everybody would understand what they meant. They
5 can't really have a conversation in a movie using
6 words that people don't know or slang terms that
7 people don't know what they mean.

8 And that I believe is what I said the
9 significance of their use in movies was.

10 Q. And all of those clips evoked laughter,
11 didn't they?

12 A. Well, some of them were talking so fast, I
13 didn't -- I'm not sure everybody could hear them.
14 But certainly the one with the two fellows at the
15 bar provoked some laughter.

16 Q. And we saw a Goofy cartoon that I found
17 rather humorous.

18 Is that consistent with the seriousness of
19 something that kills people, to be talking about
20 this in a humorous manner? Or isn't it more
21 consistent with a view that, well, cigarettes might
22 not be good for you, but everybody uses them and
23 they are all stuck with them?

24 A. Well, Mr. Murray, we have in this culture and
25 in lots of cultures a long tradition of black humor,
26 and black humor is about death and destruction.

27 Because, you know, the fact that we are all
28 going to die, we can all sit around and mope about
29 it, but sometimes we just have to say, well, let's
30 see the lighter side of that so we can get on with
31 life.

32 And I think that's more nearly where that's
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1 coming. I think that I would think of it as not a
2 mixed message, but as black humor, graveyard humor
3 sort of.

4 Q. How about this for a mixed message. I'm a
5 young soldier and I'm in a tent, and I'm watching
6 that movie with the two guys on the submarine where
7 he talks about coffin nails.

8 And then I reach in my pocket and I pull out
9 all the free cigarettes that have been sent to me

10 and my fellow soldiers, young soldiers, all fighting
11 the war.

12 Would I have a mixed message? If it's so bad
13 for them, why would my government be giving it to
14 me?

15 A. Well, I think the story on that, Mr. Murray,
16 is that folks in times of war -- and this is going
17 on for us in Iraq, or has been in the last few
18 weeks -- people in those kinds of awful stressful
19 situations, if they have used tobacco before, they
20 want it then.

21 And the fact is that historically in this
22 country, the military authorities have essentially
23 demanded that the soldiers in the field get what
24 they want. That occurred in World War I and World
25 War II.

26 The fact of the matter is that the government
27 provided them because the soldiers wanted them, and
28 the Red Cross and other kinds of organizations that
29 have attempted to come to the aid of soldiers in
30 time of war were largely responsible for buying
31 those cigarettes and providing them for soldiers.

32 To be sure, it was the Army or Navy that put
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1 them in their supply kits, but it was there because
2 soldiers wanted them and believed that it was --
3 that it was part of their right for putting
4 themselves on the line.

5 Q. Professor, isn't it also possible that the
6 soldiers wanted them because they had been given
7 free cigarettes and became hooked on them, and
8 that's the reason they wanted them?

9 A. Mr. Murray, I mean, I don't think that was
10 the historical reality.

11 I think the historical reality was that
12 people went into war with an attachment with tobacco
13 use, and once in time of stress, that was not when
14 they were going to quit.

15 Q. If that were the case, Doctor, then cigarette
16 consumption would have gone down during the war
17 instead of going up. Because you started with
18 smokers and, of course, we lost an awful lot of men
19 in those wars. It should have been going down
20 instead of up?

21 A. Well, obviously that is not what happened,
22 but that's not the explanation.

23 I think that people -- that smoking went up
24 because people were put into more stressful
25 circumstances and they continued what they had
26 already begun.

27 And it certainly was not the position of the
28 United States government to hook them. The position
29 of the United States government was to provide
30 soldiers in the field with what they said they
31 wanted.

32 Q. Doctor, another mixed message; you talked
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1 about it a little bit. These clips you showed us
2 notwithstanding, isn't it true that in a great
3 number of motion pictures in the '40s, '50s and
4 '60s, the actors were smoking on screens, glamorous
5 people that were greatly admired by the American
6 public?

7 A. I think what I said was that all kinds of
8 characters, glamorous or unglamorous, were smoking
9 because that depicted what people in American
10 society were doing in the 1930s and '40s and '50s.
11 More than half or at least half of the population
12 smoked, and thus to make a realistic movie
13 characters smoked.

14 Q. So the people were influencing the actors.
15 The actors weren't influencing the people?

16 A. I believe the way that films are made is that
17 directors and the producers decide what goes in, and
18 they essentially have decided they want to make
19 movies that show what life is really like.

20 Q. You told the jury about Humphrey Bogart. You
21 mentioned him as an example of one of these
22 glamorous people; isn't that right?

23 A. I mentioned him as a person who smoked in
24 movies, yes.

25 Q. He smoked in real life, didn't he?

26 A. He did.

27 Q. He died of lung cancer, didn't he?

28 A. He did.

29 Q. You told us about Dr. Ochsner's prediction
30 back in 1953 about what was going to happen to the
31 rate of lung cancer over the next few decades
32 because of the greatly increased incidence of
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1 smoking over the past -- over the prior two
2 decades. Do you recall that?

3 A. Yes.

4 Q. It came true, didn't it?

5 A. Yes. It was already coming true, in fact, by
6 the time he said it.

7 Q. In response to a question from Mr. Sholes,
8 you said there's nothing wrong with using cartoons
9 in getting a message to adults. Do you recall that
10 testimony?

11 A. I don't recall it exactly, Mr. Murray. But
12 certainly my understanding is that cartoons have
13 long been used to communicate messages to adults.
14 That's the nature of editorial cartooning and many
15 other things.

16 Q. But, Doctor, if you truly didn't want to
17 promote your product to children, you wouldn't use
18 cartoons, would you?

19 A. Well, if you -- well, I mean, we showed a
20 cartoon yesterday that was used to communicate to
21 children that they shouldn't smoke.

22 I think that you could -- cartoons in and of
23 themselves seem to me are neutral on that. It's
24 what -- they are what they are.

25 Q. It's the content, rather, of the cartoon?

26 A. Well, the cartoon suggests a message. It
27 could be -- it could be the content. It could be
28 the context in which the cartoon is published.

29 Q. Let me show you a cartoon.

30 MR. MURRAY:

31 Carl, would you put up Flintstone
32 Exhibit 0482.02 on the Court's monitor,
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1 please, and just show the introduction so
2 the Court and the attorneys will know
3 what -- that's good enough.

4 MR. SHOLES:
5 No objection.
6 MR. MURRAY:
7 May I publish, Your Honor?
8 THE COURT:
9 You may publish.
10 Do you need the lights off?
11 MR. MURRAY:
12 I think it would help, Judge.
13 (By video:)
14 FRED:
15 They sure work hard, don't they,
16 Barney?
17 BARNEY:
18 Yeah, I hate to see them work so
19 hard.
20 FRED:
21 Yeah, me too. Let's go around back
22 where we can't see them.
23 BARNEY:
24 We ought to do something, Fred.
25 FRED:
26 Okay. How's about taking a nap?
27 BARNEY:
28 I got a better idea. Let's take a
29 Winston break.
30 FRED:
31 That's it. Winston is the one
32 filtered cigarette that delivers flavor 20

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1 times a pack. Winston has got that
2 filtered flavor.
3 BARNEY:
4 Yeah, Fred. Menthol blend makes the
5 big difference, and only Winston has it up
6 front where it counts. Here, ahead of the
7 pure white filter. Winston packs rich
8 tobacco specially selected and specially
9 processed for good flavor in filtered
10 smoking.
11 FRED:
12 Yeah, Barney, Winston tastes good
13 like a cigarette should.
14 ANNOUNCER:
15 "The Flintstones" has been brought to
16 you by Winston, America's best selling,
17 best tasting filtered cigarette.
18 FRED:
19 Winston tastes good like a cigarette
20 should.
21 (End of video.)

22 BY MR. MURRAY:
23 Q. Doctor, would you agree with me that that
24 cartoon is intended to sell cigarettes?
25 A. Yes.
26 Q. Do you know the time slot of that cartoon?
27 A. Well, you mean the year? I think that ran
28 in --
29 Q. Time spot?
30 A. -- in 1961. It ran at night.
31 Q. Friday nights, 8:30 p.m.?
32 A. I don't know about 8:30 p.m., and I don't

18938

1 know about Friday nights.

2 I know "The Flintstones" was an adult
3 cartoon. It ran for several years. It had one year
4 of sponsorship by Reynolds.

5 But it was an adult cartoon. It was a take-
6 off on "The Honeymooners," the old Jackie Gleason
7 show from the '50s.

8 Q. Do you think that cartoon had any appeal to
9 kids?

10 A. I don't know.

11 Q. You don't know?

12 A. I don't know.

13 But I do know that by the time that that
14 cartoon ran in 1961, that, you know, we have clear
15 evidence from polling information that more than 90
16 percent of children who would have been the group
17 that I guess you are referring to already believed
18 that cigarettes were harmful, that cigarettes caused
19 lung cancer.

20 Q. That wasn't my question. My question was do
21 you think that cartoon appealed to children?

22 A. You know, I'm not an advertising expert. I
23 don't know whether it appeals or not. I just know
24 the context in which it occurred.

25 Q. Doctor, you were enough of an expert to tell
26 this jury that advertising doesn't matter to what
27 the American public knew about the risk of
28 cigarettes, didn't you?

29 A. I believe what I said, Mr. Murray, was that
30 the advertising was certainly part of the mix that I
31 considered, but that the evidence made it clear to
32 me that the American public and the children in

18939

1 particular were not taking their health information
2 from cigarette advertisements.

3 The health information was coming from the
4 mountain of public health information that was being
5 delivered by Dr. Ochsner and the American Cancer
6 Society and the surgeons general.

7 Q. Doctor, Dr. Ochsner was a very prominent man,
8 very well known, got a lot more publicity probably
9 than the mayor got.

10 But wouldn't you agree with me that the way
11 that Dr. Ochsner communicated was to go to small
12 groups of people and make his little speeches and
13 hope for a couple of column inches in The Times-
14 Picayune on the back page?

15 Isn't that really how his message got to the
16 people, if it got to them at all?

17 A. Well, we showed some documents -- and I could
18 have showed you a lot more -- that showed that
19 Dr. Ochsner was, you know, reported on by Reader's
20 Digest and The New York Times and the Newsweek and
21 Time Magazine and Life. All these major magazines
22 recognized him as not just a New Orleans doctor, but
23 as a national expert who had been the first really
24 public health type physician to identify the
25 connection.

26 So you are right, he did -- there were scads
27 of stories about what Dr. Ochsner was doing, and I
28 use those to try to explain that they had a
29 particular impact here in Louisiana.

30 But I think that his -- or tried to suggest

31 yesterday that his influence was very wide, and was
32 much greater than any single speech that he might
18940

1 have given.

2 Q. Dr. Ochsner passed away in 1982; correct?

3 A. I believe that's right, yeah.

4 Q. In your reliance materials, Doctor, you
5 provided me with a list of the New Orleans Times-
6 Picayune articles that you relied upon for your
7 views; is that correct?

8 A. Yes.

9 MR. MURRAY:

10 Carl, would you put up 0373.04?
11 Move to publish?

12 MR. SHOLES:

13 One moment, Your Honor, please.

14 MR. MURRAY:

15 Is that on your monitor, Doctor?

16 THE WITNESS:

17 Yes, sir. I can't read it, but it's
18 on here.

19 MR. SHOLES:

20 You can't read it on ours.

21 Mr. Murray, what is that number
22 again?

23 MR. MURRAY:

24 0373.04.

25 BY MR. MURRAY:

26 Q. Do you recognize that as your reliance
27 materials attached to your report?

28 A. Could I just look at it?

29 MR. SHOLES:

30 Could we get a copy, Mr. Murray? We
31 don't have a copy.

32 MR. MURRAY:

18941

1 Do you have another copy? We
2 delivered a set.

3 MR. SHOLES:

4 It's not in the set we have, not in
5 the box.

6 BY MR. MURRAY:

7 Q. Do you have it now, Doctor?

8 A. I have four pages. I don't know if that's
9 all of it.

10 Q. That's all I got on those four pages there.
11 Times-Picayune articles, February 5, 1952, through
12 September 7, 1981, shortly before Dr. Ochsner's
13 death. Is that correct?

14 A. That's what's on the list, yes, sir.

15 Q. And some portion of those represent articles
16 dealing with Dr. Ochsner?

17 A. Yes.

18 And of course, this is just a representative
19 sample. I mean, there are a lot more documents that
20 I looked at and a lot more that have reference to
21 Dr. Ochsner than is on this list.

22 Q. Well, Doctor, you didn't provide those to me,
23 and I can't provide those to the jury, can I?

24 MR. SHOLES:

25 Objection. Object to the
26 characterization.

27 THE COURT:

28 Overruled. Answer the question if
29 you are able to.
30 BY MR. MURRAY:
31 Q. Did you even make a list of those other
32 articles you relied on?

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1 A. I have many boxes of articles.
2 Q. My question, Doctor, was did you make a list
3 of them?
4 A. I have many boxes of articles, and I was
5 asked to provide a representative sample.
6 MR. MURRAY:
7 Your Honor, would you ask the witness
8 to answer my question?
9 THE COURT:
10 Doctor, if you are able to answer a
11 question with a yes or a no, you must do
12 that.
13 After you answer it, if you would
14 like to explain your answer, you may do
15 that.
16 If you are not able to answer a
17 question that's asked of you, just say I'm
18 not able to answer that question.
19 A. Yes, I provided a list of documents, and I
20 believe this is it.
21 Q. So this is the list. And to the extent you
22 made a list of the documents that you reviewed and
23 relied upon, this is it?
24 A. Yes. And I was told that --
25 THE WITNESS:
26 May I explain?
27 THE COURT:
28 You may explain your answer.
29 MR. SHOLES:
30 Objection, Your Honor. May we
31 approach?
32 THE COURT:

18943

1 Yes.
2 (At sidebar:)
3 MR. SHOLES:
4 My only concern is we believe
5 Mr. Murray may be an error.
6 There is another list. The list was
7 considerably longer than that. We don't
8 know what this one is.
9 MR. MURRAY:
10 You gave me this.
11 MR. SHOLES:
12 We gave you a list that had more than
13 this. I just wanted to point it out to
14 you.
15 MR. MURRAY:
16 For these dates, this is the only
17 ones I have seen. There may be others for
18 other days, but for these dates, '52 to
19 '81, this is all I have.
20 MR. SHOLES:
21 I know you wouldn't make a mistake --
22 MS. COKER:
23 I faxed to Steve a reliance list on
24 Monday.

25 MR. SHOLES:
26 There is another list.
27 MS. COKER:
28 The list is this long.
29 MR. SHOLES:
30 I wanted you to know because I knew
31 you wouldn't do that unless --
32 THE COURT:
18944
1 What is the issue?
2 MR. SHOLES:
3 He's telling the Doctor this is all
4 we gave him. No, this isn't all he gave
5 him.
6 THE COURT:
7 He asked the Doctor if this is not
8 the Doctor's reliance list that the Doctor
9 prepared, and I don't know that he's ever
10 answered that question.
11 But he said he has four pages that I
12 gave him, and Mr. Murray says I have four
13 pages, and is that your reliance list.
14 I don't know if he's ever answered
15 that question.
16 MR. SHOLES:
17 I'm not sure that he would even know
18 how to answer the question without having
19 a complete list in front of him.
20 MR. MURRAY:
21 That's all I have got.
22 MR. SHOLES:
23 That's not all you have. That's all
24 you gave him.
25 MR. MURRAY:
26 No, that's all I have with respect to
27 those dates.
28 THE COURT:
29 That's a dispute that I cannot
30 resolve.
31 MR. SHOLES:
32 Thank you, Your Honor.

18945

1 MR. MURRAY:
2 Then Ron will have a good time on
3 redirect.
4 THE COURT:
5 Next question, Mr. Murray.
6 (In open court:)
7 BY MR. MURRAY:
8 Q. Doctor, again, is that your reliance list of
9 articles that you relied on for Times-Picayune
10 between the dates February 5, 1952, and September 7,
11 1981?
12 A. This is a list of newspaper articles that I
13 relied on. But I studied a lot more.
14 THE COURT:
15 Mr. Murray, I don't think your
16 microphone is on.
17 BY MR. MURRAY:
18 Q. Now, Doctor, I have counted these and got 165
19 articles. Does that sound about right?
20 A. Well, you know, I haven't counted them.
21 Q. Would you take my word for it?

22 A. Yes, sir, I will take your word for it.
23 Q. Now, '52 to '81 covers thirty years, does it
24 not?
25 A. Yes, sir, just about.
26 Q. Do you know how many editions of The Times-
27 Picayune there were published during that thirty-
28 year period?
29 A. You mean like early edition, late edition,
30 final edition, that sort of thing?
31 Q. No. How many days of publication?
32 A. Oh.

18946

1 Q. Would you take my word, there were 10,950?
2 A. Yes.
3 Q. Thank you.
4 Now, Doctor, would you also take my word that
5 of those 165 articles that you have relied upon,
6 exactly one appeared on the first page of The Times-
7 Picayune?
8 A. I don't know that.
9 Q. Would you like to check it if you won't take
10 my word for it?
11 A. You know, Mr. Murray, I don't know. I just
12 don't know.
13 Q. Well, let me ask you to do it then over the
14 break. If you won't take my word for it, would you
15 go look and see if you can find any other one than
16 the one that was published on January 12, 1964, that
17 appeared on page one?
18 A. Okay.
19 Q. Thank you.
20 Now, we are going to talk about the one that
21 appeared on January 12, 1964, in a little while.
22 You showed the jury a film clip of the news
23 show See It Now. Do you recall that?
24 A. Yes, sir.
25 Q. And the commentator on See It Now was a very
26 famous journalist by the name of Edward R. Murrow;
27 is that correct?
28 A. Yes.
29 Q. Other than being a very famous commentator,
30 do you know what else Edward R. Murrow was famous
31 for?
32 A. Well, I mean, he was a wartime reporter. I

18947

1 think I mentioned that.
2 Q. He also --
3 A. He was also head of the United States
4 Information Agency.
5 Q. He also was the only commentator in the
6 history of American news who smoked cigarettes on
7 his news show, wasn't he?
8 A. I know that he smoked cigarettes on his news
9 show. I don't know if he was the only one.
10 Q. Do you know that three years after that news
11 clip that you showed the jury, he died of lung
12 cancer?
13 MR. SHOLES:
14 Objection, relevance.
15 THE COURT:
16 Overruled. Answer the question if
17 you are able to.
18 A. Well, that's not true.

19 Q. It's not?
20 A. No.
21 Q. What did he die of?
22 A. Pardon me?
23 Q. What did he die of?
24 A. Well, he died of lung cancer, but it was
25 1962, I believe, when he died. So it was seven
26 years after that.
27 Q. Thank you, I appreciate the correction.
28 Do you think the youth of America may have
29 gotten a mixed message if they happened to have been
30 fortunate enough to see that news clip that you
31 showed this jury, that every night that they watched
32 the See It Now show, the host was smoking
18948

1 cigarettes?

2 A. I think the youth of America was being well
3 informed and clearly was hearing the message and,
4 according to the polling information that we found
5 and we showed the jury, they were getting the
6 message.

7 So what Mr. Murrow did seems not to have had
8 much influence on what the youth of America
9 believed, heard and believed about smoking and lung
10 cancer.

11 Q. We are going to come to that. But just to
12 put all of this into perspective about the message
13 you seem to think was the one, weren't they getting
14 more than one message? Weren't they getting the
15 tobacco, the cigarette companies' message?

16 A. Well, I explained to the jury yesterday that
17 in fact some portion of the newspaper or television,
18 magazine stories contained comments from the tobacco
19 industry.

20 So, you know, in the sense they were getting
21 another side from what the public health community
22 was getting, but the public health community's
23 message, including the government's insertions in
24 that, was by far the overwhelming message that was
25 being reported and that was being heard.

26 Q. Doctor, wouldn't you agree with me that for
27 every one of these articles on page six and page
28 eight of The Times-Picayune that may have occurred
29 over a 30-year period, that for every one of those,
30 there were scores of cigarette advertisements that
31 kids saw every day of their lives on billboards and
32 TV advertisements and radio advertisements?

18949

1 A. Well, you know, first of all, as I said,
2 there were a whole lot more articles in The Times-
3 Picayune than were on this list, and there were not
4 scores more of advertisements than stories.

5 There were cigarette advertisements, but
6 there were lots of other advertisements that
7 everybody was being exposed to.

8 And, you know, starting in 1972, every
9 advertisement had a health warning on it.
10 Billboards, you mentioned billboards yesterday, all
11 of the ads in newspapers and magazines, you know,
12 have the warning on there since 1972.

13 So the advertisements for cigarettes, you
14 know, give that message too, the health warning.

15 Q. You showed some clips from Life Magazine,

16 didn't you?
17 A. Yes.
18 Q. Do you know how many cigarette advertisements
19 appeared on average in every edition of Life
20 Magazine?
21 A. I don't know exactly, but I have looked at
22 Life Magazine, and typically there were some
23 cigarette ads in Life Magazine just as there were
24 ads for a lot of other products.
25 Q. On average five?
26 A. Now, I don't agree with that that number. I
27 just don't know.
28 Q. Including the back covers?
29 A. I know that there were cigarette ads
30 sometimes on the back cover, but I didn't count
31 them.
32 Q. Full page?

18950

1 A. Maybe. You know, I don't know.
2 I know that there were ads there, and also,
3 as I suggested yesterday, it's clear to me from all
4 this historical research, that people paid attention
5 or took their health message from the actual news
6 reporting.
7 Q. Now, let's look, Doctor, at some of those
8 advertisements.

9 MR. MURRAY:
10 Carl, would you put up 0353.04.
11 The early '50s time frame, Doctor.
12 MR. SHOLES:
13 No objection.
14 MR. MURRAY:
15 May I publish, Your Honor?
16 THE COURT:
17 You may publish.

18 BY MR. MURRAY:
19 Q. "More Doctors Smoke Camels Than Any Other
20 Cigarette." Would that give the youth of America a
21 mixed message about the health risks of smoking
22 cigarettes?
23 A. Well, you know, Mr. Murray, I mean, I can
24 tell you --
25 Q. Doctor, can we go back to the rule, that you
26 answer my question yes or no if you can?
27 A. I can't offer you a yes or no.
28 Q. So you can't answer that question --
29 A. I can't answer you yes or no. I am happy to
30 answer the question and would like to answer the
31 question.
32 Q. Thank you.

18951

1 A. I think -- I can tell you how this ad was
2 received.
3 It was understood at the time by people in
4 the advertising and tobacco industry as being the
5 kind of ad that made a health suggestion, but that
6 backfired, that warned people that, you know, there
7 is something dangerous about all cigarettes, and
8 thus Camels is trying to say they are less dangerous
9 than others.
10 That's how it was explained in Fortune
11 Magazine and in Business Week.
12 And the Federal Trade Commission finally told

13 them they had to stop it. But the tobacco growers
14 had in fact given them, put them under so much
15 pressure that the cigarette companies were stopping
16 doing it anyway.

17 Q. Doctor, you can tell this jury what a
18 14-year-old boy in Louisiana took from this ad? You
19 have the expertise to do that?

20 A. No, sir, I don't talk about --

21 Q. I didn't think so.

22 MR. MURRAY:

23 Carl, would you blow up the printed
24 material in the bottom right-hand corner
25 of that, and highlight the sentence.

26 BY MR. MURRAY:

27 Q. "To 113,597 doctors from the Atlantic to the
28 Pacific went the query: What cigarette do you
29 smoke, Doctor? The brand named most was Camel."

30 Is that a mixed message to the youth of
31 America?

32 A. Well, let me make a couple comments about
18952

1 that. It doesn't say --

2 Q. Can you answer that question yes or no,
3 Doctor?

4 A. No, sir, I can't answer it yes or no.

5 Q. Thank you.

6 A. That doesn't say how many doctors responded.
7 You have to take the word of whoever made Camels
8 that the information --

9 Q. That's your employer, R. J. Reynolds.

10 A. Pardon me?

11 Q. That's your employer, R. J. Reynolds.

12 A. Okay, R. J. Reynolds, who I guess makes
13 Camels, that you have to take the word of the
14 advertiser that the statement is true.

15 And people are really quite skeptical of the
16 truth of advertising. That's clear from our
17 research.

18 Q. Doctor, you wouldn't --

19 A. But it doesn't say how many people, how many
20 of those 113,597 doctors are actually smokers.

21 But to the question of youth, again, as I
22 said yesterday, the youth of America was rapidly
23 getting the message that cigarettes were addictive,
24 that they were dangerous to your health, and they
25 would believe this message.

26 Q. Doctor, you are not suggesting to this jury,
27 are you, that R. J. Reynolds would have tried to
28 mislead the American public with this ad?

29 A. Well, I don't know. I'm not an expert on
30 advertising. But I am just reading the document.

31 Q. But you are enough of an expert to say that
32 children weren't influenced by advertising?

18953

1 A. I'm enough of an expert to say from a lot of
2 other research, Mr. Murray, that it really doesn't
3 matter what was in this ad, that people were getting
4 the message, the health message.

5 Q. But my question is were they getting a mixed
6 message, Doctor?

7 A. Well, and I --

8 Q. And you say you cannot answer that?

9 A. Sir?

10 Q. You say you can't answer that? After ten
11 years of research at the behest of the tobacco
12 cigarette companies in this courtroom, you can't
13 answer the question whether the jury -- whether the
14 citizens and the youth of Louisiana were getting a
15 mixed message from the advertising published by the
16 cigarette companies?

17 MR. SHOLES:

18 Objection. That's not what he said.

19 THE COURT:

20 Overruled. Answer the question if
21 you are able to.

22 A. What I have been trying to say, Mr. Murray,
23 is that there was no mixed message on the basis of
24 my research.

25 My conclusion is that there was no mixed
26 message because it was -- the evidence is so clear
27 that the message about the health risks of smoking
28 and all of the dangers associated was getting
29 through to adults and children, and that there is
30 very good evidence from the polls that they were
31 hearing it and that they were believing it.

32 So I don't believe there is a mixed message.

18954

1 Q. We will get to your evidence in a little
2 while.

3 MR. MURRAY:

4 Carl, would you put up Scott
5 Plaintiffs' Exhibit 0354.04?

6 May I publish?

7 MR. SHOLES:

8 No objection.

9 THE COURT:

10 You may publish it.

11 BY MR. MURRAY:

12 Q. Do you recognize the redhead, Doctor?

13 A. I'm sorry, I can't read it. If you tell
14 me who he is --

15 Q. That's Red Barber.

16 A. Oh, Red Barber, yes, the baseball announcer.

17 Q. And you know Bob Lemon?

18 MR. RUSS HERMAN:

19 There is a big one right there you
20 might want to look at.

21 BY MR. MURRAY:

22 Q. You know Mel Parnell, don't you, from
23 New Orleans, Red Schoendienst, Warren Spahn? All
24 sports heroes to the American youth, weren't they?

25 A. It looks to me like they are all baseball
26 players.

27 Q. Yes, sir. And they are all holding
28 cigarettes, aren't they?

29 A. Yes, they are.

30 Q. Do you think the American youth might have
31 gotten a mixed message from that?

32 A. You know, the ad has pictures of baseball

18955

1 players smoking cigarettes. I don't know what the
2 date of this ad was, but it looks like it was in the
3 1950s.

4 And as I have suggested, the youth of America
5 was getting lots of information in their health
6 classes, from their parents, they were reading

7 newspapers or magazines or their parents were
8 telling them about what was in newspapers or
9 magazines, and it is clear they were getting the
10 message and that they were believing the message in
11 the 1950s.

12 MR. MURRAY:

13 Carl, would you put up Scott Exhibit
14 0356.04?

15 May I publish, Your Honor?

16 MR. SHOLES:

17 No objection.

18 THE COURT:

19 You may publish.

20 BY MR. MURRAY:

21 Q. "More Doctors Smoke Camels Than Any Other
22 Cigarette."

23 A. Yes.

24 Q. You don't think that had any influence on the
25 American youth, or American adults for that matter?

26 A. Again, this is the kind of ad that scared
27 those tobacco farmers that they condemned and that
28 Business Week and Fortune Magazine condemned,
29 because it was scaring people because it was
30 reinforcing the health danger message.

31 Q. Doctor, I wouldn't argue with you that they
32 should have been condemned, but don't you think that

18956

1 people would take from that that if doctors are
2 doing it, it must be all right for me?

3 A. A person could take that, but I'm just
4 telling you what did happen.

5 And the condemnation was not on the basis of
6 cigarettes and health. It was the condemnation from
7 tobacco farmers who felt they were not going to be
8 able to sell tobacco because the cigarette companies
9 were scaring people with their ads.

10 And it was clear from reports at the time
11 that these ads backfired. They reinforced the
12 health concern.

13 Q. Doctor, do you have any idea what it would
14 cost to run that ad on the back cover of a Life
15 Magazine?

16 MR. WITTMANN:

17 Objection, Your Honor. May we
18 approach?

19 (At sidebar:)

20 MR. WITTMANN:

21 I think Mr. Murray is heading down
22 the road to get in cost of advertising
23 campaigns through the back door which of
24 course he can't get in.

25 MR. MURRAY:

26 Your Honor, I asked him if he had any
27 idea what it would cost.

28 THE COURT:

29 Suppose he suggests I know it costs X
30 dollars, and the way he's been just
31 running on making speeches, and I know
32 that Reynolds' budget for X year was X

18957

1 million, blah, blah, blah.

2 MR. MURRAY:

3 Let me just make this point, Judge.

4 It's clear that what the cigarette
5 companies are trying to do in this
6 litigation is suggest that advertising has
7 no impact.

8 And the only way that we can deal
9 with that, Your Honor, is to show what the
10 advertising budgets were compared to the
11 budgets of the health agencies and other
12 people.

13 It's just not fair to allow them to
14 make those inferences and then not allow
15 us to respond to it.

16 THE COURT:

17 I have ruled that way, and I decline
18 to change my ruling at this point.
19 Objection sustained.

20 (In open court:)

21 THE COURT:

22 The objection is sustained. Don't
23 answer that question.

24 Next question, please, Mr. Murray?

25 BY MR. MURRAY:

26 Q. Doctor, you don't think the cigarette
27 companies were running those ads to scare people, do
28 you?

29 A. I can't speak to the motive of the
30 companies. I can just tell you what the historical
31 record shows about their impact, and I have
32 testified to that.

18958

1 Q. Doctor, the motive of this is not apparent to
2 you, to sell cigarettes?

3 A. Oh, well, I presume that the ad is to sell
4 cigarettes, yes.

5 Q. Now, Doctor, let's talk about those polls
6 that you rely on that tell you what people believed
7 about cigarettes.

8 You showed us some Gallup polls in which the
9 question was asked: Have you heard or read anything
10 concerning the subject of whether cigarettes may be
11 a cause of lung cancer? And 90 percent of the
12 people said yes to that.

13 A. Yes, sir, I read that.

14 Q. That was a poll taken in 1954.

15 A. Yes.

16 Q. Does that tell you anything about what people
17 believed?

18 A. No.

19 Q. As a matter of fact, if you had asked the
20 question in the '50s: Have you heard or read
21 anything about UFOs or unidentified flying objects
22 flying over the skies of the United States? You
23 would have gotten a higher answer for that question
24 than 90 percent, wouldn't you?

25 A. Now, I don't know that.

26 Q. It wouldn't surprise you, would it?

27 A. Well, I mean, people have heard lots of
28 things.

29 Q. And that doesn't mean anybody believed --

30 A. But people are talking about -- you know, the
31 American Cancer Society has never put forward that
32 UFOs are flying over, and neither has the Surgeon

18959

1 General, and neither is Dr. Ochsner for that
2 matter.
3 The kinds of information that I was talking
4 about was information that was put forward by very
5 authoritative sources.
6 Q. That's what you called an awareness poll?
7 A. The 1954 Gallup Poll, yes.
8 Q. That means: Are you aware of the issue?
9 A. Yes.
10 Q. And then you told us about a 1959 poll which
11 the question was asked: Have you heard that
12 cigarettes may cause lung cancer? That's also an
13 awareness poll?
14 A. Yes.
15 Q. And you didn't cite any Gallup polls for us
16 that was a belief poll, did you?
17 A. No, but I could have.
18 Q. But you did cite a poll conducted by Senior
19 Scholastic Magazine, that's a magazine that was
20 distributed to some high school students around the
21 country; right?
22 A. That's right, yes.
23 Q. Do you know what the circulation of Senior
24 Scholastic Magazine was in the schools of
25 New Orleans and Louisiana?
26 A. I don't know exactly, but I believe that it
27 was distributed here.
28 Q. Why do you believe that?
29 A. Well, because it went into schools all over,
30 all over the country, and I have no reason to
31 believe there is anything different about public
32 schools in Louisiana.

18960

1 Q. Well, maybe some of these folks went to the
2 public schools in Louisiana.
3 MR. GAY:
4 Object.
5 THE COURT:
6 I'm sorry?
7 MR. GAY:
8 I'm sorry, I can't object, Judge.
9 A. Well, one of the polls --
10 THE COURT:
11 Just a moment. I have an objection.
12 MR. LONG:
13 It was withdrawn.
14 THE COURT:
15 The objection is withdrawn, excuse
16 me. Next question, please.
17 BY MR. MURRAY:
18 Q. You called that a belief poll, did you not?
19 A. I showed you two polls from 1959. One was an
20 awareness poll and one was a belief poll. And the
21 Senior Scholastic I believe was a belief poll.
22 Q. A belief poll.
23 Now, let me see if I'm not correct. The
24 Senior Scholastic poll asked this question: Do you
25 believe there may be some connection between smoking
26 and lung cancer?
27 And that's what you call a belief poll?
28 A. Yes.
29 Q. Isn't that just another way of asking an
30 awareness question?

31 A. No.
32 Q. If you wanted to know if people believe that
18961
1 cigarette smoking causes lung cancer, wouldn't you
2 ask: Do you believe that cigarette smoking causes
3 lung cancer?
4 A. That would be one way of doing it.
5 Q. It would certainly be a better way than
6 asking: Do you believe there may be some
7 connection?
8 A. Well, I don't know that it's a better way.
9 That's another way of doing it.
10 But I believe the question was clear to the
11 school kids it was asked to.
12 Q. Let me show you a clear question, Doctor.
13 MR. MURRAY:
14 May I have the Roper 1959 poll? It's
15 Exhibit 3092.
16 Just put up the cover for the Court
17 and counsel.
18 BY MR. MURRAY:
19 Q. Now, Roper is another national polling
20 organization, is it not?
21 A. Yes.
22 Q. Very well respected?
23 A. Yes.
24 Q. Do you recognize that poll?
25 A. May I see the document?
26 Q. Sure.
27 THE COURT:
28 I have one that I can give to the
29 witness, Mr. Murray.
30 A. Yes, I have seen this document.
31 Q. That's one of the ones that the tobacco
32 company lawyers showed you that was the property of
18962
1 Philip Morris; right?
2 A. Mr. Murray, I mean, a lawyer showed me this.
3 They said it was on your list of documents. I don't
4 know where it came from, but obviously it originated
5 from the Roper organization.
6 MR. MURRAY:
7 Well, Your Honor, may we publish?
8 MR. SHOLES:
9 No objection.
10 THE COURT:
11 You may publish it.
12 MR. MURRAY:
13 Put up the cover. Highlight and blow
14 up the type.
15 BY MR. MURRAY:
16 Q. A Study of Attitudes Toward Cigarette Smoking
17 and Different Types of Cigarettes, January 1959;
18 correct?
19 A. Yes.
20 MR. MURRAY:
21 Go to the next page, please, Carl.
22 Move to publish?
23 THE COURT:
24 You may publish it.
25 MR. MURRAY:
26 Would you blow up the top, please,
27 the three lines at the top?

28 The same title.
29 Now, would you blow up the lines in
30 the middle of the page, please?
31 BY MR. MURRAY:
32 Q. Prepared for Philip Morris, Incorporated,
18963
1 January 1959.
2 A. Yes, sir, I see that now.
3 Q. That's a poll done by Roper for
4 Philip Morris?
5 A. Yes, sir.
6 MR. MURRAY:
7 Carl, would you go to page 33? It's
8 the last page, Carl. I have the page but
9 not the Bates number.
10 May I publish, Your Honor?
11 THE COURT:
12 You may publish it.
13 MR. MURRAY:
14 Would you highlight the second to
15 last paragraph? Blow it up.
16 BY MR. MURRAY:
17 Q. Now, Doctor, that's a belief question, isn't
18 it?
19 A. Yes.
20 Q. And isn't that what the American public
21 believed: If they didn't smoke too much, it
22 wouldn't do them any real harm? Almost 70 percent
23 of the people polled believed that?
24 A. Well, obviously that was the response to
25 this. But of course it depends on how the person
26 heard the question.
27 As long as you don't smoke any cigarettes --
28 if you don't smoke any, that could be part of not
29 too much, cigarettes won't do you any real harm.
30 Q. That's what you think that question asked?
31 A. That's how a person could have heard that
32 question. There are a lot of other questions asked
18964
1 in this poll. But that is the response.
2 MR. MURRAY:
3 Thank you, Doctor.
4 THE COURT:
5 We are going to take our morning
6 recess at this point until a minute or two
7 after eleven.
8 (In open court without a jury
9 present:)
10 THE COURT:
11 Let the record reflect the jury has
12 left the courtroom.
13 Anything for the record by plaintiffs
14 counsel?
15 MR. RUSS HERMAN:
16 Nothing for the record, Your Honor.
17 THE COURT:
18 Defense counsel?
19 MR. BELASIC:
20 Yes, Your Honor.
21 Once again I would ask for an
22 instruction that we avoid nonverbal
23 communication with the jury, and
24 particularly the snickering, the head

25 shaking, that continually goes on
26 particularly from the front row here with
27 the plaintiffs.

28 I don't know why I have to keep
29 asking this. Your Honor instructs them
30 every time, but they violate it.

31 MR. RUSS HERMAN:

32 I think Mr. Belasic is absolutely
18965

1 wrong.

2 May it please the Court, I think it's
3 a personal insult. I think these lawyers
4 have acted fine for the last twelve or
5 thirteen weeks.

6 And every once in a while Mr. Belasic
7 gets irritated, and his irritation shows.
8 But I don't think it should have to rub
9 off on us or this record.

10 MR. BELASIC:

11 Well, I don't think --

12 THE COURT:

13 Mr. Herman, no more personal comments
14 by either side, no snickering and no
15 nonverbal comments to the jury by either
16 side.

17 We will recess until a few minutes
18 after eleven.

19 (A recess is taken at 10:49 a.m.)

20 -- -- --

21 (In open court with a jury present at
22 11:07 a.m.):

23 THE COURT:

24 Please be seated.

25 Mr. Murray?

26 MR. MURRAY:

27 Thank you, Your Honor.

28 BY MR. MURRAY:

29 Q. Good morning, again, Professor.

30 A. Good morning.

31 Q. Professor, do you remember talking to the
32 jury about the American Cancer Society?

18966

1 A. Yes, sir.

2 Q. And telling them that the American Cancer
3 Society was well financed?

4 A. I don't remember talking about that,
5 Mr. Murray, but of course the American Cancer
6 Society certainly had funds to carry on a lot of
7 activities. I don't know how much.

8 Q. And then you told the jury that the American
9 Cancer Society never let up. Do you recall that?

10 A. Yes, sir.

11 Q. Can you tell the jury whether the Tobacco
12 Institute ever let up until 1997?

13 A. I'm not sure I understand what you mean by
14 never let up with regard to the Tobacco Institute.

15 Q. I mean the same thing you meant about the
16 American Cancer Society. They never let up giving
17 their message. Did the Tobacco Institute ever let
18 up giving its message until 1997 after this suit was
19 filed?

20 A. I think that they were consistent in their
21 position.

22 Q. Did you ever compare the budget of the
23 Tobacco Institute with the budget of the American
24 Cancer Society?
25 A. No.
26 Q. Doctor, I can't recall the context, but I
27 wrote this down. You said after everybody had
28 really accepted the connection between smoking and
29 lung cancer. Do you recall that?
30 A. I don't recall the context, Mr. Murray. I
31 may have said that.
32 Q. Can you tell the jury when it was that
18967
1 everybody had really accepted the connection between
2 smoking and lung cancer?
3 A. Well, it's difficult to place a date, but I
4 believe the gist of my testimony -- and this is what
5 I believe -- is that the smoking and lung cancer
6 connection was well reported and widely understood
7 in the early 1950s.
8 Q. And I think you have already testified that
9 that would have included the tobacco cigarette
10 companies?
11 A. Yes.
12 Q. Now, when was it that the connection between
13 smoking and emphysema was accepted by the American
14 public?
15 A. Well, Mr. Murray, just sitting here today, my
16 recollection is that it was later. My assessment is
17 that it came somewhat later.
18 Q. That's the best you can do for us? You can't
19 ballpark it?
20 A. Well, I think that it was -- COPD, emphysema
21 was certainly discussed extensively in the 1950s.
22 Q. So would it be fair to say then that it's
23 your opinion that the causal relationship between
24 smoking and emphysema or COPD was well known before
25 1960?
26 A. Yes.
27 Q. And therefore also well known to the
28 cigarette companies?
29 A. Yes.
30 Q. Okay. Heart disease, same question with
31 respect to heart disease, when was that?
32 A. There was a lot of discussion about heart
18968
1 disease and smoking in the early '50s, and there of
2 course have been earlier suggestions about, not in
3 terms of cigarettes, but in terms of tobacco,
4 because it was tobacco overall was bad for your
5 heart.
6 Q. Again, outside, 1960?
7 A. I'm sorry, sir, outside?
8 Q. Yeah, the outside date, the latest date by
9 which we could conclude that the American public and
10 therefore the cigarette companies knew that smoking
11 caused heart disease?
12 A. Well, I think there certainly is a lot of
13 discussion about it in the -- throughout the 1950s.
14 I think the public health community was less -- no,
15 made emphatic statements about the connection later
16 than they were making emphatic statements about the
17 connection between lung cancer and smoking.
18 But emphysema and heart disease were clearly

19 part of the discussion about the health risks in the
20 1950s. More so in the 1960s.

21 Q. Doctor, do you have a copy of your report in
22 front of you, your affidavit of January 15, 1997?

23 A. I do not.

24 THE COURT:

25 I have one that I can give to the
26 witness.

27 MR. MURRAY:

28 Thank you, Your Honor.

29 BY MR. MURRAY:

30 Q. Doctor, I'm looking at the first page in the
31 third paragraph, you state:

32 In my opinion, Americans in general
18969

1 and the people of Louisiana in particular
2 have historically known about the
3 potentially addictive or habit-forming
4 nature of the use of tobacco, especially
5 cigarettes.

6 And that suggests that historically there was
7 a question about that, because you use the word
8 potentially addictive.

9 When was it established that cigarettes were
10 addicting in the minds of the American public?

11 A. Well, what this statement says I believe is
12 that people in Louisiana and Americans in general
13 have historically known that tobacco and cigarettes
14 especially were potentially addictive or habit-
15 forming to any individual.

16 In terms of time, that possibility or that
17 likelihood that it was habit-forming has always
18 been -- has been understood.

19 Q. Now, Doctor, throughout your report, you
20 relate things that were known to the public, and
21 then you cite some sources that you rely upon to
22 demonstrate that; is that correct?

23 A. Yes.

24 Q. And those sources numbered 58; is that
25 correct?

26 A. Are you counting footnotes? Is that what you
27 are doing?

28 Q. Yes, sir.

29 A. Okay.

30 Q. The last one is on the last page of
31 affidavit, Getting Hooked on Tobacco, 58?

32 A. Yes. I cited 58 sources, 58 footnotes.

18970

1 There may be more than one source in some of them.

2 Q. Yeah, a lot of them are repeated, you know, a
3 similar source, like newspapers might have been
4 quoted many times.

5 Let me go through these with you and see how
6 many of these you think that people of Louisiana
7 would have had ready access to.

8 You quote No. 1, The Quarterly Review, July
9 and October of 1913. Do you think any members of
10 this class had access to that?

11 A. Mr. Murray, can you tell me again how this
12 class is defined?

13 Q. I'm sorry?

14 A. Can you tell me again how the class is
15 defined?

16 Q. Let's use just Louisiana smokers -- there is
17 more to it than that, but for your purposes I think
18 that suffices -- who were smoking as of 1996?
19 A. Well, I don't know how many, but this is a
20 document that could be available.
21 Q. You don't expect it had any circulation. I
22 mean if you went to a library and looked for it, you
23 might find it.
24 A. Yes.
25 Q. Same thing true for No. 2, "The ABC Way to
26 Stop Smoking Cigarettes," 1943?
27 A. No. I found it in a library. I'm not sure
28 about whether it would be more widely available in
29 Louisiana. I found it in a library in Alabama.
30 Q. The third reliance is J. B. Wight, Tobacco:
31 Its Use and Abuse published in 1889. Would that be
32 generally available in Louisiana?

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1 A. I would expect it would be available in a
2 library.
3 Q. Will H. Brown, Tobacco Under the Search
4 Light, 1825?
5 A. The same.
6 Q. New York Times, March 25, 1980?
7 A. In a library, I think.
8 Q. With respect to The New York Times, because
9 you cited them numerous times, New York Times, there
10 are some subscribers to The New York Times in the
11 state of Louisiana?
12 A. I'm sorry, what's the question?
13 Q. You suspect there are some subscribers to The
14 New York Times in Louisiana?
15 A. Yes.
16 Q. But very few, wouldn't you think?
17 A. There are not too many in Tennessee. I
18 expect there would be about the same here.
19 Q. Probably more in Tennessee than there are
20 here.
21 A. You haven't been to Tennessee lately, I
22 suppose.
23 Q. You cite The Philadelphia Public Ledger.
24 That's not a magazine or a newspaper with any
25 circulation in New Orleans?
26 A. I doubt that it was, no.
27 Q. And then you cite of course New Orleans
28 Times-Picayune, Lafayette Advertiser, Baton Rouge
29 Morning Advocate, and those have some circulation,
30 but you don't know how much and where in Louisiana?
31 A. Sir, is the question about the Louisiana
32 newspapers?

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1 Q. Yes.
2 A. Well, I mean, I can't cite you the exact
3 figures, but The Times-Picayune has long been the
4 main newspaper in New Orleans, certainly read by
5 lots of people.
6 And I believe that would hold for the
7 Lafayette Advertiser, and the Morning Advocate in
8 Baton Rouge.
9 Q. I have no question about that, Doctor, but my
10 question was do you know what the circulation was?
11 A. No, I don't know what the circulation was.
12 Q. Now, the personal papers of Dr. Ochsner, you

13 would have to go to The New Orleans Historical
14 Collection to find those, and you did, didn't you?
15 A. Yes, sir.
16 Q. And you have eight or ten references to that
17 source, don't you?
18 A. Yes, sir.
19 Q. Century Magazine, March 1912 edition, what do
20 you think the circulation of that in Louisiana would
21 have been?
22 A. It was a widely circulated magazine in 1912
23 throughout the United States, but I would just be
24 guessing to say. I expect it was here.
25 Q. Do you think we have any class members still
26 around who were around in 1912?
27 A. They would be 91 years old. Well, they
28 couldn't read in 1912.
29 Q. You would have to be over a hundred, wouldn't
30 you?
31 A. Right, so there wouldn't be very many.
32 Q. And Consumer Reports, is that a widely
18973

1 circulated publication?
2 A. Well, that is a pretty widely circulated
3 magazine. You can find that on newsstands just
4 about anywhere.
5 Q. Then you have Newsweek, Time, Newsweek. And
6 you talked about Reader's Digest. But let me ask
7 you this.
8 With respect to the periodicals, the
9 magazines, Life, Newsweek, Reader's Digest, are any
10 of those widely read by the youth, people 12 to 16?
11 A. Well, my impression is yes. You know, I read
12 Time Magazine all the time growing up and, you know,
13 I was just a regular kid in Alabama.
14 My child reads Newsweek, she's 11. She reads
15 it every week.
16 Now, I'm not saying everybody does, but I
17 think those kinds of magazines are read by children
18 of -- old enough to understand the vocabulary.
19 And of course a lot of the information in
20 there, as I said yesterday, you know, was passed
21 along by adults who read it to children.
22 Q. Doctor, you don't think it's typical of
23 teenagers to be reading articles in monthly
24 magazines, do you?
25 A. Which monthly magazines?
26 Q. The ones that we have talked about, Newsweek,
27 Time?
28 A. Well, those are weekly magazines, and I think
29 there are lots of teenagers who read them.
30 Now, I can't tell you what the percentage is,
31 and again I'm just going on my common sense and
32 experience.

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1 Q. On page 14 -- do you have page 14 of your
2 report? You cite The Congressional Record. Not
3 widely circulated in Louisiana, is it?
4 A. It would be in the libraries.
5 Q. It was interesting, a couple of quotes I
6 would like to ask you about from The Congressional
7 Record.
8 The second paragraph:
9 Senator Richard Neuberger from

10 Oregon, 1958, said on the floor of the
11 Senate: "Today's adolescents are
12 tomorrow's addict" is the theme that
13 threads through all cigarette advertising.
14 You quoted that in your report. Do you agree
15 with that?

16 A. Well, certainly that's what Senator Neuberger
17 said. That was his interpretation.

18 You know, my research suggests that or
19 looking at the ads -- I'm not sure how he got
20 there. And I can't speculate on what his purpose
21 was except that's what he said.

22 And I used it here to talk about how the
23 issue of the addictive nature or habit-forming
24 nature of smoking was identified and made public
25 through the -- through the discussions or
26 pronouncements of important legislators.

27 Q. You used it as evidence of what Louisiana
28 people knew about smoking and addiction, didn't you?

29 A. I used it as evidence that information about
30 addiction was being distributed.

31 I don't vouch for the truth or veracity of
32 it. I just say that's what the man said, and it

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1 became part of the information available at the
2 time.

3 Q. Well, other than Senators Alan Ellender and
4 Russell Long, do you know anybody from Louisiana who
5 was present on the Senate floor in 1958 when Senator
6 Neuberger said that?

7 A. No, sir.

8 Q. You also quote Senator Maurine Neuberger.
9 That's as different Neuberger; right?

10 A. Yes. She succeeded him. She died and she
11 filled his seat.

12 Q. You quote her as saying:

13 We are all sadly familiar with grim
14 tails of family or friends so dependent
15 upon cigarettes that not even the onset of
16 lung cancer or a coronary could induce
17 them to stop it.

18 You quoted that in your report, didn't you?

19 A. Yes, sir.

20 Q. You also quote an FTC report from 1967, don't
21 you, on that same page?

22 A. Yes, sir.

23 Q. You wrote:

24 The following year the FTC report to
25 Congress stated that, quote, we owe an
26 obligation to our children to help them
27 avoid being hopelessly trapped in the
28 cigarette smoking habit, a habit which,
29 when they are old enough to appreciate its
30 dangers, may be impossible for them to
31 break.

32 You wrote that, didn't you?

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1 A. Yes, sir. That's what the FTC said.

2 Q. Doctor, can you tell this jury a single
3 proactive step that in all of your research you have
4 found that was undertaken by the cigarette industry
5 to avoid trapping our children into the cigarette
6 smoking habit?

7 MR. SHOLES:
8 Objection. Beyond the scope.
9 THE COURT:
10 Overruled. Answer the question if
11 you are able to.
12 A. Well, of course, there is a lot of
13 information put out. If you go into a Seven-Eleven
14 now, there is date stuff and signs about that.
15 Q. There are indeed, and before you continue let
16 me rephrase my question.
17 Prior to the filing of this suit.
18 A. There were a number of times in the research
19 that I did statements made by the spokesmen for the
20 tobacco industry that said that cigarettes were an
21 adult product for the use of adults prior to the
22 filing of this case. I saw evidence that was dated
23 well before this case where those kinds of
24 statements were cited.
25 Q. And those statements were given to justify
26 the ads like the Joe Camel, sports figures, that
27 kind of thing, weren't they?
28 A. Well, they were given in a number of
29 circumstances. I don't remember Joe Camel, it being
30 part of that. But I'm not saying it was not.
31 Q. We are going to come to some of that.
32 MR. MURRAY:

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1 Carl, would you put up Exhibit 367.04
2 for the Court and the witness?
3 BY MR. MURRAY:
4 Q. This is a footnoted exhibit to your report;
5 is that correct?
6 A. Could I see the paper copy, Mr. Murray?
7 THE COURT:
8 I have one that I can give the
9 witness.
10 A. Mine is not clear. Is this the one from The
11 New York Times?
12 Q. Yes, New York Times, April 23, 1905, your
13 Footnote 8?
14 A. Yes, sir.
15 Q. And you cited this in support of your opinion
16 that Louisiana smokers knew what they needed to know
17 about smoking and health; is that right?
18 A. Well, I use this statement that from this --
19 from this article in 1907 that said: Cigarettes are
20 cigarettes, and once you get to light the little
21 sticks, there is nothing that can take their place.
22 Which was evidence that in 1907 people were aware of
23 the addictive nature of smoking cigarettes.
24 Q. It says a little more than that, doesn't it?
25 Look at the paragraph that is identified "Fourth"?
26 A. "Fourth"?
27 Q. Yes.
28 A. Okay.
29 Q. Read along with me.
30 MR. MURRAY:
31 I'm sorry, publish?
32 MR. SHOLES:

18978

1 No objection.
2 THE COURT:
3 You may publish it.

4 MR. MURRAY:
5 Highlight "Fourth," Carl, and blow it
6 up for us, please?

7 BY MR. MURRAY:

8 Q. The cheapness, mildness and facility
9 of use cause the cigarette to be a
10 temptation to boys, thousands of lads
11 between the ages of twelve and sixteen
12 acquire the smoking habit during these
13 most critical years of their life.

14 I believe that without the existence
15 of the cigarette, many of these youths
16 would certainly not smoke at this early
17 age, and a very large proportion arriving
18 at maturity without having acquired the
19 habit would escape it altogether.
20 That's true today, isn't it?

21 MR. SHOLES:

22 Objection, beyond the scope.

23 THE COURT:

24 Overruled. Answer the question, if
25 you are able to.

26 A. Well, you know, I'm not an expert on child
27 behavior, but, you know, just common sense is that
28 lots of folks begin smoking ages twelve to sixteen.

29 Q. And it's also a fact that if they don't start
30 while they are twelve to sixteen, they are much less
31 likely to ever become smokers?

32 A. Now, again, I'm not an expert on that. That
18979

1 may or may not be true.

2 MR. MURRAY:

3 Carl, would you put up Scott 364.04?

4 BY MR. MURRAY:

5 Q. Now, this is also a footnoted article from
6 your report from Newsweek, May 30, 1988; is that
7 correct?

8 A. Mr. Murray, can you tell me what footnote
9 number it is?

10 Q. 58.

11 A. Okay.

12 Q. Now, this is an article reporting on the U.S.
13 Surgeon General C. Everett Koop's finding on the
14 addictive nature of tobacco; is that correct?

15 A. Yes.

16 MR. MURRAY:

17 May we publish, Your Honor?

18 THE COURT:

19 You may publish it.

20 MR. MURRAY:

21 Carl, about the sixth line down
22 beginning with "But in his annual report,"
23 would you highlight that first paragraph?

24 MR. SHOLES:

25 Objection, hearsay.

26 THE COURT:

27 Overruled. You may publish it.

28 MR. MURRAY:

29 Would you blow it up, please?

30 THE COURT:

31 You may highlight it.

32 BY MR. MURRAY:

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1 Q. This states that:
2 But in his annual report on, quote,
3 The Health Consequences of Smoking, closed
4 quote, last week, U.S. Surgeon General
5 C. Everett Koop did find still another
6 charge to make: Nicotine, the active
7 ingredient in tobacco, is every bit as
8 addicting as those headline-grabbing
9 substances of abuse: Heroin and cocaine.
10 This is reporting on the opinion of the U.S.
11 Surgeon General, C. Everett Koop, is it not?
12 A. Yes.
13 MR. MURRAY:
14 Carl, in the second paragraph
15 beginning with "The Tobacco Institute,"
16 would you highlight what the tobacco
17 industry had to say about Dr. Koop's
18 opinion?
19 BY MR. MURRAY:
20 Q. The Tobacco Institute denied that
21 nicotine is addictive. It claimed that
22 smoking is a truly personal choice which
23 can be stopped if and when a person
24 decides to do so.
25 Now, is it not true that the Tobacco
26 Institute responded to Surgeon General Koop and
27 disagreed with his conclusions?
28 A. Yes.
29 MR. MURRAY:
30 Carl, would you go to 363.04, which
31 is your Footnote 44, Doctor.
32 May we publish, Your Honor?
18981
1 MR. SHOLES:
2 No objection.
3 THE COURT:
4 You may publish it.
5 MR. MURRAY:
6 Carl, would you highlight beginning
7 at the last three words in the first
8 column, "The report shows," through the
9 first paragraph in the third column?
10 BY MR. MURRAY:
11 Q. Now, this is an article you saw fit to
12 include in your report, did you not?
13 A. I cited it.
14 Q. You cited it and footnoted it?
15 A. I did, yes.
16 Q. The report shows that while the
17 smoking rate has declined substantially
18 among certain classes of American men, it
19 has fallen only slightly among women.
20 And women are now paying the price
21 for taking up the habit in such great
22 numbers in the middle of the century:
23 Their lung cancer rates have quadrupled
24 since the 1960s.
25 By the same token, blacks, blue-
26 collar workers, and people without high
27 school educations are all doing more than
28 their share of the smoking and dying.
29 The tobacco industry's critics say
30 that these trends are no accident, that

31 the cigarette makers were long aware that
32 affluent white males are fleeing, and have
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1 simply taken aim at another segment of the
2 market.

3 By designing special cigarettes for
4 women, directing ads and promotions at
5 minority groups, and increasing exports to
6 developing countries, they say the
7 industry has simply shifted the burden of
8 illness.

9 Matthew Myers, head of the Coalition
10 for Smoking and Health, argues that,
11 quote, without dramatic measures, perhaps
12 a ban on cigarette advertising, American
13 life expectancy will become more and more
14 a function of class and race. Without
15 dramatic measures.

16 That was reported in Newsweek in January 23,
17 1989; is that correct?

18 A. That's what it says.

19 Q. And again, that's referring to a statement by
20 Surgeon General C. Everett Koop, is that not
21 correct, Surgeon General's Report on Smoking?

22 A. Well, I mean, the story is about the Surgeon
23 General's report.

24 You know, I can't read it here. I can't read
25 it there, and I don't believe all of those
26 statements were from him.

27 Q. Let me help you. It says:

28 Like past reports, the new one
29 suggests that cigarettes are even deadlier
30 than suspected. The latest evidence is
31 that smoking kills three hundred and
32 ninety thousand Americans annually, nearly

18983

1 three jumbo jet loads every day; that it
2 causes strokes in addition to heart and
3 lung disease; and that it may cause
4 uterine cancer in women.

5 That's what Surgeon General C. Everett Koop
6 reported in 1989, didn't he?

7 A. Yes, he did.

8 Q. And the Tobacco Institute had a response to
9 that, didn't they?

10 MR. MURRAY:

11 Carl, in the third column under
12 "Clear Message," would you go down about
13 ten or twelve lines under the sentence
14 beginning "That was one theme of a
15 campaign the industry."

16 BY MR. MURRAY:

17 Q. That was one theme of a campaign the
18 industry launched last week. In full page
19 newspaper ads, the Tobacco Institute
20 claimed that a survey had shown Americans
21 are fed up with antismoking efforts.

22 Quote, the message is clear, closed
23 quote, said a spokeswoman. Quote, public
24 support for more taxation, more
25 restrictions, more censorship, more
26 harassment and more discrimination is
27 missing.

28 That was the tobacco industry's response to
29 the Surgeon General, was it not, in 1989?
30 A. Yes, sir, that's what the report says.
31 MR. MURRAY:
32 Carl, would you put up Scott Exhibit
18984

1 366.04?

2 BY MR. MURRAY:

3 Q. This is also a source from your report, is it
4 not, Footnote 36?

5 MR. MURRAY:

6 May we publish, Your Honor?

7 MR. SHOLES:

8 Your Honor, may we approach for a
9 moment?

10 THE COURT:

11 Yes.

12 (At sidebar:)

13 MR. SHOLES:

14 Judge, we just want to make a
15 continuing objection to this line of
16 questioning only because Mr. Murray is now
17 reading in statements which clearly are
18 hearsay for which we do not have an
19 opportunity to examine the speaker to
20 check, to correct, or to challenge his
21 veracity.

22 The Doctor cited the things as
23 notification of awareness and notice, not
24 to in any way acknowledge the proof or
25 veracity of the statements made by the
26 alleged speaker of that article.

27 THE COURT:

28 Mr. Murray?

29 MR. MURRAY:

30 Judge, these are being quoted because
31 they are what he says the American public
32 was being told, including Louisiana.

18985

1 Now, what I'm demonstrating is for
2 everything that the public health
3 community communicated, the Tobacco
4 Institute came back and said, no, it's not
5 true. You know, I'm entitled to
6 demonstrate that.

7 THE COURT:

8 I agree with you. The objection is
9 overruled.

10 (In open court:)

11 BY MR. MURRAY:

12 Q. Doctor, before we go forward with this
13 document that's on the screen at the moment, I want
14 to ask you something about the Newsweek article we
15 just talked about.

16 This business of full page newspaper ads
17 taken out by the tobacco industry, if the public
18 health authorities made a statement to the American
19 people, wasn't it the usual practice of the tobacco
20 industry to respond with full page advertisements in
21 American newspapers to get their message to the
22 American people?

23 A. Well, I don't know that it was their regular
24 practice, but by the time we are talking about here

25 in the 1980s, they occasionally did that.
26 And some of that I think had to do with the
27 fact that the newspaper and magazine articles
28 typically didn't view them as an authoritative
29 source on the smoking and health question. So they
30 would take out ads.
31 Q. But they did that for a purpose, didn't
32 they? Wasn't it their intent to communicate with

18986

1 the people of America and Louisiana?

2 MR. WITTMANN:

3 Objection, Your Honor. Speculation,
4 what the intent was.

5 MR. MURRAY:

6 He's a historian, Your Honor.

7 THE COURT:

8 Just a moment, please.

9 The objection is overruled. Answer
10 the question if you are able to.

11 A. Having seen some of those articles, I do
12 think they were there to communicate with the
13 public.

14 Now, what their intent was other than to
15 communicate with the public, put forward their point
16 of view, I can't speculate on that.

17 Q. But it's your belief that whatever they
18 communicated didn't matter because the people knew
19 better?

20 A. Well, you know, there was evidence to the
21 effect, Surgeon General Koop, we just read his
22 statements from, said in 1986 that the tobacco
23 companies were irrelevant to the smoking and health
24 debate. He said that and it was widely quoted.

25 Because by then all the information
26 practically was coming, at least in the news
27 columns, was coming from the public health
28 community, people like Everett Koop.

29 Q. But obviously the tobacco industry didn't
30 agree with that or they wouldn't have spent all that
31 money on full page newspaper ads, would they?

32 A. It does not look like they agreed with it,

18987

1 no.

2 MR. MURRAY:

3 Now, let's go to Scott Exhibit
4 366.04.

5 MR. SHOLES:

6 Same objection. May we make that
7 continuing, Your Honor?

8 THE COURT:

9 The objection is overruled, and you
10 may have a continuing objection.

11 BY MR. MURRAY:

12 Q. This was also footnoted in your report,
13 Footnote 36. This is a Times-Picayune, May 23,
14 1990. And I have to stand corrected, because this
15 is a page one article.

16 It begins on page one with "Kicking the Habit
17 is a One-Person Job," and it is continued to page --
18 the page number isn't shown, but further back in the
19 newspaper. But I want to direct your attention to
20 the continuation of the article.

21 MR. MURRAY:

22 Carl, would you publish page one
23 first, and then page two?
24 THE COURT:
25 Objection overruled. You may
26 publish.
27 MR. MURRAY:
28 Publish page one first, Carl.
29 BY MR. MURRAY:
30 Q. This is page one of The Times-Picayune,
31 "Kicking the Habit is a One-Person Job." And this
32 is a report about research done at the University of
18988

1 Wisconsin; is that correct?
2 A. Which footnote did you say that was,
3 Mr. Murray?
4 Q. 36.
5 A. Is this the May 23rd or the November 15th?
6 Q. May 23rd, 1990.
7 A. Okay. No, I cited it because the headline
8 has to do with, you know, the addictive nature,
9 people assuming the addictive nature of smoking.
10 But I don't recall. It's been seven years
11 since I viewed this, so if I could read it again? I
12 don't remember what is in the body of the article.
13 Q. Well, let's go to page two, and if you want
14 to put it in context, feel free. But I just wanted
15 to direct your attention to the fourth paragraph on
16 the second page. Would you highlight that, please?
17 The article is discussing smoking cessation
18 programs; is that correct?
19 A. I believe so.
20 MR. MURRAY:
21 Would you blow up the fourth
22 paragraph, Carl? That's it.
23 BY MR. MURRAY:
24 Q. These researchers report such
25 programs are useful because they serve
26 hard-core smokers, the heaviest, most
27 addicted smokers who have tried the most
28 to quit and failed, said Dr. Fiore of the
29 University of Wisconsin, leader of the
30 research team.
31 You included this in your report, did you
32 not?

18989

1 A. Yes, sir.
2 MR. MURRAY:
3 Go to Footnote 44. This is Scott
4 362.04.
5 BY MR. MURRAY:
6 Q. Now, this is an article that you took out of
7 Newsweek Magazine in March of 1994; is that
8 correct?
9 A. Yes.
10 MR. MURRAY:
11 May we publish, Your Honor?
12 MR. SHOLES:
13 Same objection.
14 THE COURT:
15 Overruled. You may publish it.
16 BY MR. MURRAY:
17 Q. Now, this news article that you included in
18 your report concerns President Clinton's suggestions

19 on how to deal with the cigarette issue, does it not?
20 A. Again, Mr. Murray, I used it for what the
21 headline says about addiction. I don't remember,
22 but I would be happy to look through and be reminded
23 of what President Clinton said.
24 Q. They are not only going into the specifics
25 necessarily of President Clinton's plan, but it does
26 concern raising cigarette taxes, does it not?
27 A. That's implied by the title. Again, I
28 haven't read this article for quite a while.
29 Q. Doctor, this article is some four or five
30 years after the Newsweek article that we talked
31 about earlier, the one where the Surgeon General
32 reported three hundred ninety thousand annual
18990

1 deaths. Is that not correct?

2 A. You know, this was 1990. I remember that
3 article. I don't remember the date, but I will take
4 your word for it.

5 MR. MURRAY:

6 Carl, would you highlight in the
7 third column the second paragraph,
8 please? It goes through the President's
9 proposal.

10 BY MR. MURRAY:

11 Q. Now, this Newsweek article, that I assume
12 would have been available to some Louisiana readers,
13 reports:

14 Smoking kills 420,000 Americans a
15 year. That's 50 times as many as illegal
16 drugs. Yet the federal government taxes
17 cigarettes at a lower rate today than it
18 did in the early '60s when the health
19 effects of smoking were being discovered.

20 Even when the current federal levy of
21 twenty-four cents a pack is coupled with
22 state taxes, the combined rates are the
23 lowest in the developed world.

24 The tobacco industry has spent
25 millions denouncing the Clinton plan to
26 raise the federal tax by 75 cents to 99
27 cents a pack.

28 Philip Morris Companies and the R. J.
29 Reynolds Tobacco Company recently bussed
30 thousands of tobacco workers into
31 Washington to protest the President's
32 proposal.

18991

1 And you included that in your report, did you
2 not?

3 MR. SHOLES:

4 Your Honor, may we approach, please?

5 THE COURT:

6 You may approach.

7 (At sidebar:)

8 MR. SHOLES:

9 Judge, I know Mr. Murray didn't do it
10 intentionally, but this apparently has
11 reference to how much money the tobacco
12 companies have spent on advertising and
13 promotional activities.

14 I believe that is purely prohibited,
15 and we just want to caution counsel not to

16 do it again in the future.
17 MR. MURRAY:
18 I didn't do it.
19 THE COURT:
20 Well --
21 MR. MURRAY:
22 This is their document.
23 THE COURT:
24 Just a moment, Mr. Murray.
25 I prohibited that, testimony of that
26 sort, before the jury. You are flirting
27 with another mistrial motion if you go any
28 further in terms of advertising dollars
29 versus research dollars, and you are
30 getting close to the line.
31 I don't think it's an objection, so
32 there is no ruling required.

18992

1 MR. MURRAY:
2 Well, I didn't say that, Judge. And
3 the document doesn't say that. The
4 document talks about what they did in
5 another context, not advertising.
6 THE COURT:
7 The lunch recess is at noon. That's
8 eight minutes from now.

9 MR. MURRAY:
10 Thank you.
11 (In open court:)
12 MR. MURRAY:
13 Carl, would you put up Scott 368.04?

14 BY MR. MURRAY:
15 Q. Now, this is from your reliance materials,
16 Doctor. It's not footnoted in your report, but it
17 was included in your reliance materials. Do you
18 recognize this?

19 A. Yes, I have seen it. I don't recall the
20 exact date of it, but I have seen this document.

21 Q. It's dated July 26, 1957, from U.S. News and
22 World Report.

23 MR. MURRAY:
24 May we publish, Your Honor?

25 MR. SHOLES:
26 No objection.

27 THE COURT:
28 You may publish.

29 Here is a copy of the document.

30 BY MR. MURRAY:
31 Q. Now, Doctor, this is an article in U.S. News
32 and World Report, headlined "Interview with Dr. John

18993

1 R. Heller, Director, National Cancer Institute, U.S.
2 Public Health Service, The Truth About Smoking and
3 Cancer, What is Known and Unknown."

4 And this is 1957; is that correct?

5 A. Yes.

6 Q. And it's at least read by some Americans and
7 perhaps some Louisianians?

8 A. Yes.

9 Q. And basically it's a question and answer
10 interview with Dr. Heller?

11 A. Yes.

12 Q. Okay. Now, would you turn to page 63?

13 MR. MURRAY:
14 And Carl, I don't have the number on
15 the Bates number, I apologize to you.
16 It's page 63 of the report. Can you find
17 it?
18 It's on the screen?
19 MR. RUSS HERMAN:
20 It's on the screen.
21 MR. MURRAY:
22 May we publish, Your Honor?
23 THE COURT:
24 You may publish.
25 BY MR. MURRAY:
26 Q. And after reporting on this interview from
27 Dr. Heller, there is the tobacco industry reply. Is
28 that correct?
29 A. Yes.
30 Q. And that was fairly typical throughout the
31 years, was it not, that newsmen would go to the
32 Tobacco Institute to get the reply of the industry?

18994

1 A. Yes.
2 Q. In fact, isn't it true, Doctor, that
3 throughout, the only contrary position that you
4 would have found in the materials being read by the
5 citizens of the United States was from the tobacco
6 industry?
7 A. Well, how do you mean contrary?
8 Q. The only ones who were disagreeing with what
9 the public health authorities were saying was the
10 cigarette industry?
11 A. Well, in 1957 there were debates among the
12 public health authorities about, you know, certain
13 things, about whether there should be a warning or
14 not in 1957.
15 But by 1957, the public health community
16 surely was agreed that smoking was the main cause of
17 lung cancer.
18 Q. Let's see what -- I'm sorry, I thought you
19 were finished.
20 A. And, you know, the Tobacco Institute was one
21 of the groups that expressed reservation or
22 typically would call for more research.
23 Q. And that was their consistent position all
24 the way up to 1997, wasn't it? From 1953 to 1997,
25 the tobacco industry said with one voice: We don't
26 know the answers. We are doing the research. It's
27 a controversy. Isn't that true?
28 A. They said something to that effect. You
29 know, they called it a controversy. But the public
30 didn't seem to think it was a controversy.
31 Q. They also said consistently and with one
32 voice: Our products are not injurious to health,

18995

1 didn't they?
2 A. Well, I remember them saying at certain
3 points they didn't think they were, which is
4 probably close to the same thing.
5 Q. Well, we will see.
6 But in this they responded through
7 Dr. Clarence Cook Little, Chairman of the Scientific
8 Advisory Board to the Tobacco Industry Research
9 Committee, which was the predecessor to the Tobacco

10 Institute; is that correct?
11 A. Well, it was one of the tobacco industry -- I
12 think that is not the exact predecessor, but it was
13 an arm of the -- it was something set up by the
14 tobacco industry. It may have been folded into the
15 Tobacco Institute later.

16 THE COURT:

17 Mr. Murray, it's time for our
18 luncheon recess.

19 We are going to recess at this point
20 until 1:30.

21 (In open court without a jury
22 present:)

23 THE COURT:

24 Let the record reflect the jury has
25 left the courtroom.

26 Anything for the record by plaintiffs
27 counsel?

28 MR. RUSS HERMAN:

29 Yes.

30 I have noticed that Mr. Belasic
31 attempts to make eye contact with the
32 witness when the witness gets in trouble,

18996

1 and nods his head one way or another.

2 I would appreciate it if he wouldn't
3 do that, for the record. We would object.

4 THE COURT:

5 Anything else by plaintiffs counsel?

6 MR. WITTMANN:

7 No, Your Honor.

8 THE COURT:

9 Defense counsel? Nothing?

10 MR. SCHNEIDER:

11 No, Your Honor.

12 MR. LONG:

13 Nothing, Your Honor.

14 (Whereupon, the hearing recesses at
15 12:03 p.m.)

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1 REPORTER'S CERTIFICATE

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I, NICHOLAS A. MARRONE, CCR, Registered
Merit Reporter, do hereby certify that the foregoing
proceedings were reported by me in shorthand and
transcribed under my personal direction and

7 supervision, and is a true and correct transcript,
8 to the best of my ability and understanding.

9 That I am not of counsel, not related to
10 counsel or the parties hereto, and not in any way
11 interested in the outcome of this matter.

12

13

14

NICHOLAS A. MARRONE (CCR 21011)

CERTIFIED COURT REPORTER

15 REGISTERED MERIT REPORTER

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